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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MENACHEN SHOVAL,

12 Plaintiff,

13 vs.

14 SAN DIEGO COUNTY SHERIFF
15 DEPUTY EVAN SOBZAK; THE
16 COUNTY OF SAN DIEGO; and DOES I
through X, inclusive,

Defendants.

**CASE NO. 09-CV-01348-H
(JMA)**

**ORDER GRANTING MOTION
TO DISMISS**

17
18 On June 23, 2009, Plaintiff Menachen Shoval filed a complaint for violation of civil
19 rights against Defendants San Diego Sheriff Deputy Evan Sobczak (erroneously sued as Evan
20 Sobzak) and the County of San Diego. (Doc. No. 1, Compl.) On July 30, 2009, Defendants
21 filed a motion to dismiss three causes of action in the complaint pursuant to Fed. R. Civ. Pro.
22 12(b)(6). (Doc. No. 2.) Plaintiff filed a response in opposition on August 17, 2009. (Doc. No.
23 3.)

24 The Court, pursuant to its discretion under Local Rule 7.1(d)(1), determines this matter
25 is appropriate for resolution without oral argument and submits it on the parties' papers. For
26 the reasons set forth below, the Court grants the Defendants' motion to dismiss.

27 **Background**

28 Plaintiff alleges causes of action for: (1) excessive force, unlawful detainer, unlawful

1 arrest; (2) municipal federal civil rights liability; (3) assault and battery in violation of
 2 California Civil Code 52.1; (4) assault and battery; (5) false arrest; (6) negligence; and (7)
 3 negligent supervision. (Compl.) As the basis for these claims, Plaintiff alleges that on or
 4 about July 3, 2009, he was lawfully on his property at the 1400 block of Mina De Oro Road
 5 in Poway, California when Defendant Sobczak, acting under color of law as a San Diego
 6 County Sheriff Deputy, entered Plaintiff's property. (Id. ¶¶ 4-5, 13.) Plaintiff alleges that
 7 without probable cause Sobczak falsely detained Plaintiff by placing handcuffs on him after
 8 pointing a gun at him and pulling the trigger. (Id. ¶ 5.) Plaintiff also alleges that Sobczak
 9 assaulted and battered Plaintiff without just or reasonable belief in the lawfulness of his
 10 actions. (Id. ¶ 5.) Plaintiff alleges that after he was placed in handcuffs, Sobczak searched his
 11 person and thereafter released Plaintiff. (Id. ¶ 6.) Plaintiff alleges that Sobczak's actions
 12 would not have occurred but for an official policy, decision, and guidelines of Defendant
 13 County of San Diego that authorized and condoned the use of excessive force on Plaintiff's
 14 person. (Id. 13.)

15 Defendants brought a motion to dismiss Plaintiff's second, third, and seventh causes of
 16 action pursuant to Fed. R. Civ. Pro. 12(b)(6). Plaintiff states in his opposition that he concurs
 17 with Defendants' request for the seventh cause of action to be dismissed, and requests that the
 18 dismissal be without prejudice. (Doc. No. 3 at 1.)

19 Discussion

20 A motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) tests
 21 the legal sufficiency of the claims asserted in the complaint. Navarro v. Black, 250 F.3d 729,
 22 731 (9th Cir. 2001). A complaint generally must satisfy only the minimal notice pleading
 23 requirements of Federal Rule of Civil Procedure 8(a)(2) to evade dismissal under a Rule
 24 12(b)(6) motion. Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2) requires that
 25 a pleading stating a claim for relief contain "a short and plain statement of the claim showing
 26 that the pleader is entitled to relief." The function of this pleading requirement is to "give the
 27 defendant fair notice of what the . . . claim is and the grounds upon which it rests." Conley v.
 28 Gibson, 355 U.S. 41, 47 (1957). "While a complaint attacked by a Rule 12(b)(6) motion to

dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964–65 (2007). A complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting id. at 556). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 127 S.Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235–36 (3d ed. 2004)). "All allegations of material fact are taken as true and construed in the light most favorable to plaintiff. However, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." Epstein v. Wash. Energy Co., 83 F.3d 1136, 1140 (9th Cir.1996); see also Twombly, 127 S.Ct. at 1964–65.

A. Municipal Civil Rights Violation

Plaintiff alleges in his second cause of action that senior officers of the San Diego Sheriff Department, a division of Defendant County of San Diego, authorized, sanctioned, and ratified each action of Sobczak and that Defendant County of San Diego failed to train or supervise Sobczak in a reckless and/or grossly negligent manner. (Compl. ¶¶ 14-15.) Plaintiff also alleges that it was the custom or usage of the San Diego County Sheriff Department to allow its officers to proceed without supervision and with explicit authorization to use unconstitutional means to detain Plaintiff. (Id. ¶ 16.)

To prevail on a § 1983 complaint against a local government under Monell v. Department of Social Services, a plaintiff must satisfy a three-part test: (1) The official(s) must have violated the plaintiff's constitutional rights; (2) The violation must be a part of policy or custom and may not be an isolated incident; and (3) A nexus must link the specific policy or custom to the plaintiff's injury. 436 U.S. 658, 690-92 (1978). A plaintiff may establish municipal liability based on policy or custom in one of three ways:

- (1) by showing a longstanding practice or custom which constitutes the standard operating procedure of the local government entity;

1 (2) by showing that the decision-making official was, as a matter of state law,
2 a final policymaking authority whose edicts or acts may fairly be said to
3 represent official policy in the area of decision or

4 (3) by showing that an official with final policymaking authority either
5 delegated that authority to, or ratified the decision of, a subordinate.

6 Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir.2005).

7 The Court concludes that Plaintiff fails to state a claim for a municipal civil rights
8 violation. Plaintiff's complaint includes only conclusory allegations concerning a policy or
9 custom devoid of further factual enhancement. See Iqbal, 129 S.Ct. at 1949. Plaintiff does not
10 allege any facts to support holding the County of San Diego liable under one of the theories
11 that can show a policy or custom of a municipality. These bare bone allegations are little more
12 than a formulaic recitation of the elements of a municipal civil rights claim and are insufficient
13 to raise Plaintiff's right to relief above the speculative level. Plaintiff's allegations fail to meet
14 the Twombly pleading standard. Accordingly, the Court grants Defendants' motion to dismiss
15 Plaintiff's second cause of action with leave to amend.

16 Defendants also contend that Plaintiff cannot state a claim for municipal civil rights
17 violation against the County because the policy Plaintiff alleges concerns a Sheriff law
18 enforcement matter. (Doc. No. 2 at 9.) Defendants rely on the California Supreme Court's
19 decision in Venegas v. County of Los Angeles, which held that a county cannot be held liable
20 for municipal civil rights violations when a sheriff acts for the state in conducting
21 investigations. 32 Cal.4th 820 (2004). However, Plaintiff maintains that the Ninth Circuit case
22 Brewster v. County of Shasta, 274 F.3d 803 (9th Cir. 2001), is controlling. (Doc. No. 3 at 3.)
23 Brewster holds that California Sheriffs act on behalf of the county when investigating crimes
24 and therefore can be liable under §1983. Id. The Court concludes that Venegas does not
25 overturn Ninth Circuit precedent on this issue regarding a federal statute and does not control
26 on issues of federal law. The ultimate question of a county's §1983 liability is one of federal
27 law, although the inquiry is dependent on an analysis of state law. See Brewster, 275 F.3d at
28 806; Streit v. County of Los Angeles, 236 F.3d 552, 560 (9th Cir. 2001). Accordingly, until

the Ninth Circuit addresses the issue and abrogates Brewster, this Court is bound by Ninth Circuit precedent. Therefore, the Court denies without prejudice Defendants' motion to dismiss Plaintiff's second cause of action on the grounds that San Diego County Sheriffs act on behalf of the state when investigating crime.

B. Violation of California Civil Code § 52.1

Plaintiff's third cause of action is for assault and battery in violation of California's Bane Act, Civil Code § 52.1. (Compl. ¶¶ 18-19.) Section 52.1 provides that any individual may institute a civil action for damages:

[i]f a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.

Cal. Civ. Code § 52.1(a)-(b).

Defendants argue that a county cannot be held liable under § 52.1 because it is not a "person" within the meaning of the section. (Doc. No. 2 at 4-5.) However, the case Defendants cite to support this argument, does not address the issue and in fact holds that the County of Los Angeles was not entitled to summary adjudication on a § 52.1 cause of action based on a qualified immunity argument. Venegas, 153 Cal.App.4th at 1246-47. Defendants also cite California Civil Code § 14 for their argument that the County cannot be liable under § 52.1. (Doc. No. 2 at 5.) Section 14 states that, "the word person includes a corporation as well as a natural person." Defendants have not made a sufficient showing that this definition does not encompass California counties, especially in light of the many cases naming counties as defendants in § 52.1 causes of action. See, e.g., Venegas, 153 Cal.App.4th 1230; Reynolds v. County of San Diego, 84 F.3d 1162 (9th Cir. 1996); Craft v. County of San Bernardino, 468 F.Supp.2d 1172 (2006); Thompson v. County of Los Angeles, 142 Cal.App.4th 154 (2006).

Defendants also argue that Plaintiff's third cause of action should be dismissed because Plaintiff does not allege that he was battered and unlawfully detained for the purpose of

1 interfering with one of his constitutional rights separate from that implicated by the use of
 2 force and detention. (Doc. No. 2 at 5.) Section 52.1 requires “an attempted or completed act
 3 of interference with a legal right, accompanied by a form of coercion.” Jones v. Kmart Corp.,
 4 17 Cal.4th 329, 334 (1998). The essence of a Bane Act claim is that the defendant, by “threats,
 5 intimidation or coercion,” tried to or did prevent the plaintiff from doing something he or she
 6 had the right to do under the law, or to force the plaintiff to do something that he or she was
 7 not required to do under the law. Id.; see also Austin V. v. Escondido Unified School Dist., 149
 8 Cal.App.4th 860, 883 (2007).

9 The Court grants Defendants’ motion to dismiss Plaintiff’s Bane Act cause of action
 10 with leave to amend. Plaintiff’s allegations in his third cause of action, which refer to his
 11 allegations in paragraphs 2 through 8 of his first cause of action, fail to meet Rule 8(a)’s
 12 requirements of “a short and plain statement of the claim showing that the pleader is entitled
 13 to relief” against each Defendant. (See Compl. ¶¶ 18-19.) From Plaintiff’s complaint, it is
 14 unclear what legal right under the Constitution or laws of the United States or under the
 15 Constitution and laws of California Plaintiff alleges Defendants interfered with and what
 16 actions constitute Defendants’ threats, intimidation, or coercion. Without these allegations,
 17 Plaintiff’s complaint fails to sufficiently put Defendants’ on notice of the claims against them.

18 **C. Negligent Supervision**

19 Plaintiff’s seventh cause of action is for negligent supervision against Defendant County
 20 of San Diego. (Compl. ¶¶ 29-34.) Plaintiff alleges that the County was responsible for the
 21 reasonable operation and supervision of San Diego County Sheriff Officers, that the County
 22 owed a duty to the general public, especially members that would come into contact with
 23 Sheriff Officers, and that the County’s negligent supervision allowed Sobczak to physically
 24 injure and falsely arrest Plaintiff. (Id. ¶¶ 29-32.) Plaintiff also alleges that the County knew
 25 or should have known about citizen complaints against Sobczak. (Id. ¶ 33.) Defendants argue
 26 that this cause of action should be dismissed because negligent hiring, training, and supervising
 27 is not a statutory theory of recovery that can be maintained against the County under the
 28 California Tort Claims Act (“CTCA”). (Doc. No. 2 at 2.) Plaintiff concurs with Defendants’

1 request for dismissal of this cause of action, but asks that it be without prejudice. (Doc. No.
2 3 at 1.)

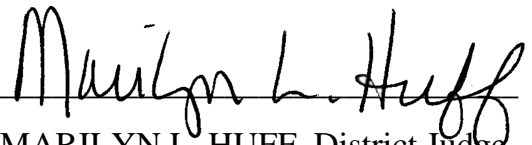
3 The CTCA provides the exclusive scope of tort liability for government entities and
4 employees. Cal. Gov't Code § 810, et seq. Common law governmental tort liability was
5 eliminated by the CTCA. Datil v. City of Los Angeles, 263 Cal.App.2d 655, 660 (1968). As
6 a result, public entities are only liable for any injury if a statute is found declaring them to be
7 liable. Cal. Gov't Code § 815; Searcy v. Hemet Unified School Dist., 177 Cal.App.3d 792,
8 802 (1986). California courts have repeatedly held that there is no statutory basis for direct
9 claims against a public entity for negligent hiring and supervision practices. See Zelig v.
10 County of Los Angeles, 27 Cal.4th 112 (2002); de Villers v. County of San Diego, 156
11 Cal.App.4th 238, 252 (2007); Munoz v. City of Union City, 120 Cal.App.4th 1077 (2004).
12 Plaintiff has made no effort to identify a statutory basis supporting a direct claim against the
13 County for Plaintiff's injuries allegedly caused by the County's generic negligence in
14 supervising its employees, specifically Defendant Sobczak. Accordingly, to the extent that
15 Plaintiff's seventh cause of action is against the County for direct liability based upon its
16 negligent supervision of Sobczak, the Court grants Defendants' motion to dismiss with
17 prejudice.

18 Conclusion

19 For the reasons set forth above, the Court GRANTS Defendants' motion to dismiss
20 Plaintiff's second cause of action with leave to amend, Plaintiff's third cause of action with
21 leave to amend, and Plaintiff's seventh cause of action with prejudice. Plaintiff may file a first
22 amended complaint within 30 days of the date of this Order.

23 **IT IS SO ORDERED.**

24 DATED: August 31, 2009

25 
26 MARILYN L. HUFF, District Judge
27 UNITED STATES DISTRICT COURT
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